

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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 Petitions for Reconsideration )  
 )  
 Telecommunications Carriers' Use )  
 of Customer Proprietary Network Information )  
 and Other Customer Information )  
 )

CC Docket No. 96-115

**COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. ("WorldCom"), hereby files its initial comments in response to the various petitions for reconsideration filed on May 26, 1998 in the above-referenced proceeding. WorldCom strongly supports reconsideration of: (1) the Commission's decision not to subject the Regional Bell Operating Companies ("RBOCs") to the nondiscrimination requirements of Section 272 of the Telecommunications Act of 1996 ("1996 Act"); and (2) the onerous tracking and reporting requirements imposed on WorldCom and other nondominant carriers.

**I. INTRODUCTION AND SUMMARY**

The petitions present a considerably wide range of issues related to the proper interpretation of Section 222 of the Telecommunications Act of 1996. In WorldCom's view, the overriding principle of that provision is that every telecommunications carrier has a duty to protect the confidentiality of customer proprietary network information ("CPNI") related to its customers and other competing telecommunications carriers. In particular, Congress indicated that Section 222 is intended to "balance both competitive and consumer privacy interests with

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respect to CPNI."<sup>1</sup>

At the same time, the Commission cannot overlook the fact that incumbent local exchange carriers ("ILECs") -- solely because of their traditional monopoly role in the local exchange and exchange access markets -- have unfettered access to all the CPNI of their local exchange customers. This includes these customers' competitively-valuable and highly sensitive long distance CPNI, as well as comparable information for every customer of a competitive local exchange carrier ("CLEC") if the CLEC uses either unbundled network elements or resells ILEC services. By contrast, no competing carrier, including CLECs and interexchange carriers ("IXCs"), can hope to match the ubiquitous and all-inclusive nature of the proprietary information gathered and utilized by the ILECs, all without the informed consent of end user customers.

Thus, while all carrier customers have been granted statutorily-guaranteed privacy rights in their CPNI, the CPNI controlled by the dominant ILECs, especially the RBOCs, is both far more valuable and far more vulnerable to misuse. Because Congress recognized this unassailable fact, Section 272 imposes a strict nondiscrimination standard on the RBOCs' provision of "information," including CPNI, to their affiliates. In four previous filings in this proceeding, WorldCom urged the Commission to adopt CPNI rules which fully implement Congress' intent, especially with respect to Section 272.<sup>2</sup> Given the crucial statutory distinction

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<sup>1</sup> See Joint Explanatory Statement of the Committee of Conference, at 88.

<sup>2</sup> See Comments of LDDS WorldCom, CC Docket No. 96-115, filed June 11, 1996; Reply Comments of LDDS WorldCom, CC Docket No. 96-115, filed June 26, 1996; Further Comments of WorldCom, CC Docket No. 96-115, filed March 17, 1997; Further Reply Comments of WorldCom, CC Docket No. 96-115, filed March 27, 1997.

between RBOCs and other telecommunications service providers, the Commission should have targeted its rules to the CPNI collected and controlled by the RBOCs in their privileged monopoly role as provider of local exchange and exchange access services. Unfortunately, the Commission chose to discount the reach of Section 272 altogether.

WorldCom wholeheartedly agrees with the Competitive Telecommunications Association ("CompTel"),<sup>3</sup> AT&T,<sup>4</sup> Sprint,<sup>5</sup> MCI,<sup>6</sup> and others that the Commission was absolutely wrong in failing to apply Section 272 to the RBOCs. By ignoring the dictates of Section 272, the Commission has failed to devise federal CPNI rules that mirror the statutory dichotomy between the RBOCs and all other telecommunications service providers. Instead, those rules not only fail to protect consumer privacy, but also allow the incumbents to leverage CPNI to the advantage of their Section 272 affiliate. This fundamental legal flaw must and should be corrected on reconsideration.

## **II. THE COMMISSION SHOULD REVERSE ITS ILL-CONSIDERED DECISION NOT TO APPLY SECTION 272 TO THE RBOCS**

The statutory structure created by Congress to govern CPNI is premised on the irrefutable fact that the RBOCs uniquely have access to competitively-valuable and highly

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<sup>3</sup> Competitive Telecommunications Association Petition for Reconsideration, CC Docket No. 96-115, filed May 26, 1998 ("CompTel Petition").

<sup>4</sup> AT&T Petition for Reconsideration And/Or Clarification, CC Docket No. 96-115, filed May 26, 1998, at 23-24 ("AT&T Petition").

<sup>5</sup> Petition of Sprint Corporation for Reconsideration, CC Docket No. 96-115, filed May 26, 1998, at 6-8 ("Sprint Petition").

<sup>6</sup> Petition of MCI Telecommunications Corporation for Reconsideration and Clarification, CC Docket No. 96-115, filed May 26, 1998, at 2-22 ("MCI Petition").

sensitive information about their customers. Congress established a clear dichotomy in the 1996 Act between the actions of the RBOCs and their affiliates, and all other unaffiliated entities, with regard to CPNI. In particular, while Section 222 establishes certain minimal requirements applicable to all common carriers in using and disclosing their customers' CPNI, Section 272 of the Act goes further to create unequivocal nondiscrimination requirements, including publication requirements, with which each RBOC and its affiliates must comply in their provision or use of the CPNI of the RBOC's customers.

Section 272(c)(1) broadly prohibits discrimination between an RBOC's affiliate and any other entity. In its Non-Accounting Safeguards Order,<sup>7</sup> the Commission concluded that Section 272(c)(1) represents nothing short of "an unqualified prohibition against discrimination by a BOC in its dealings with its section 272 affiliate and unaffiliated entities."<sup>8</sup> Because the text does not include a bar against "unreasonable" or "unjust" discrimination, the Commission found that Section 272(e)(1) presents "a more stringent standard" than Section 202(a) of the Communications Act.<sup>9</sup> As a result, the Commission found that "BOCs must treat all other entities in the same manner as they treat their section 272 affiliates," meaning that "a BOC must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions."<sup>10</sup> The

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<sup>7</sup> Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489, released December 24, 1996 ("Non-Accounting Safeguards Order").

<sup>8</sup> Non-Accounting Safeguards Order at para. 197.

<sup>9</sup> Id.; see 47 U.S.C. § 202(a).

<sup>10</sup> Non-Accounting Safeguards Order at para. 202.

Commission indicated that it intends to construe the terms of section 272(c)(1) broadly,<sup>11</sup> so that the nondiscrimination protection offered by this provision "extends to any good, service, facility, or information that a BOC provides to its section 272 affiliate."<sup>12</sup>

When read in conjunction with Section 222, Section 272(c)(1) plainly requires that an RBOC may use, disclose, or permit access to CPNI for or on behalf of its affiliate only if the CPNI is also made available to all other entities on the very same terms and conditions. By its plain meaning, Section 272(c)(1) covers a BOC's "dealings with its affiliate," including the "provision of ... information" such as CPNI. Moreover, nothing in Section 222 -- or, indeed, any other provision of the Act -- indicates that Section 272(c)(1) does not apply to the CPNI provisions of the Act. This interpretation is consistent with the Commission's own broad view of Section 272(c)(1) as an "unqualified prohibition" against disparate treatment of affiliates and unaffiliated entities. Indeed, there is no other reasonable interpretation of Section 272(c)(1).

Furthermore, Section 272(c)(1) expressly applies only to an RBOC and its affiliate. All other non-RBOC entities -- including unaffiliated IXC's and CLECs -- are not required to treat themselves or their affiliates the same way they treat any other unaffiliated entities. In other words, the broad nondiscrimination overlay provided by Section 272(c)(1) reaches only the RBOCs and their affiliates, and does not apply to other carriers. This Congressional design makes perfect sense in light of the RBOCs' longstanding ubiquitous control over valuable and vulnerable CPNI that the RBOCs (for the most part) have been free to use without prior notification or informed consent by customers. Therefore, in interpreting Section

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<sup>11</sup> Id. at para. 216.

<sup>12</sup> Id. at para. 218.

222, non-RBOCs are permitted to treat their affiliates differently than other entities, and are not required to treat their affiliates as third parties for which the customers' affirmative written requests must be secured before CPNI can be disclosed.

Another pertinent provision ignored by the Commission is Section 272(b)(1), which states that the Section 272 affiliate "shall operate independently" from the RBOC. When read in conjunction with Section 222, this provision prohibits the Section 272 affiliate from providing or coordinating any of its CPNI-related functions with the RBOC.<sup>13</sup> The Commission concluded in the Non-Accounting Safeguards Order that Section 272(b)(1) imposes requirements separate and distinct from the other requirements listed in Sections 272(b)(2)-(5).<sup>14</sup> WorldCom believes that the "operate independently" requirement of Section 272(b)(1), like the nondiscrimination requirement of Section 272(c)(1), provides an additional gloss on the Section 222 rules, one that demonstrates Congress' clear intent to establish a statutory dichotomy between CPNI and CPNI-related services used, disclosed, or accessed by a RBOC or its affiliate, and the CPNI and CPNI-related services used, disclosed, or accessed by other unaffiliated entities. The Commission's rules must, therefore, distinguish between these two wholly separate worlds of CPNI controlled by RBOCs and CPNI controlled by non-RBOCs.

Nonetheless, despite the crystal-clear language of the statute, and its own unchallenged interpretation of that language in the Non-Accounting Safeguards Order, the Commission overrode both the Act and itself by deciding not to apply Section 272 to the

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<sup>13</sup> Interestingly, while the Act stipulates that the RBOCs' joint marketing and sales efforts are not bound by the nondiscrimination requirements of Section 272(c), the "operate independently" proviso of Section 272(b)(1) does apply to those operations.

<sup>14</sup> Non-Accounting Safeguards Order at para. 156.

RBOCs' gathering and use of CPNI. In WorldCom's view, the Commission is flat out wrong in setting aside Section 272 as it implemented Section 222. The Commission should grant the petitions for reconsideration filed by CompTel and other carriers, and adopt rules that truly reflect the language, structure, and intention of the 1996 Act.

### **III. THE COMMISSION SHOULD REVISIT ITS IMPOSITION OF ONEROUS CPNI-RELATED REQUIREMENTS ON NONDOMINANT CARRIERS**

WorldCom also agrees with CompTel, AT&T, Sprint, MCI, LCI, and many other carriers that the Commission lacks an adequate record -- and, indeed, adequate notice -- upon which to base its decision to impose onerous new tracking requirements on nondominant carriers.<sup>15</sup> The Commission's order establishes that all carriers must:

- develop and implement software systems that "flag" customer service records in connection with CPNI; these flags must be displayed within a box or comment field and indicate whether a customer has approved the marketing use of CPNI (para. 198);
- train all employees with access to customer records as to when they can and cannot access customers' CPNI (para. 198);
- maintain internal procedures to handle employees that misuse CPNI (para. 198);
- maintain an electronic audit mechanism that tracks access to customer accounts, including recording whenever customer accounts are opened, by whom, and for

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<sup>15</sup> See CompTel Petition; AT&T Petition at 8-18; Sprint Petition at 2-6; MCI Petition at 34-43; Petition for Reconsideration of Frontier Corporation, CC Docket No. 96-115, filed May 26, 1998, at 3-5 ("Frontier Petition"); Petition for Reconsideration of LCI International Telecom Corp., CC Docket No. 96-115, filed May 26, 1998, at 2-7 ("LCI Petition").

what purpose; such contact histories must be maintained for at least one year (para. 199);

- establish a supervisory review process that ensures that sales personnel comply with CPNI restrictions when conducting outbound marketing (para. 200); and
- submit an annual certification, signed by a corporate officer, attesting that the carrier is in compliance with the FCC's CPNI requirements (para. 201).

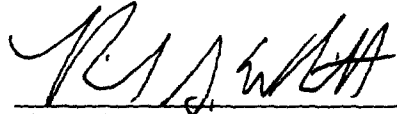
The Commission's new rules will require WorldCom and other nondominant carriers to undertake significant changes to their current software systems, internal procedures, and training processes. None of these carriers have been required before to track their CPNI usage, let alone to the degree required by the newly-adopted rules. The record in this proceeding certainly does not support the Commission's imposition of these new compliance costs on carriers, especially nondominant carriers. WorldCom joins with CompTel and many other carriers in seeking reconsideration of this requirement.



**IV. CONCLUSION**

The Commission should grant the petitions for reconsideration in accordance with the recommendations proposed above.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'C. R. Sloan', written over a horizontal line.

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June 25, 1998

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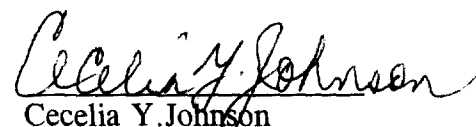
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